

NTSB Order No. EA-3883

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 8th day of May, 1993

Respondent .

Docket SE-10703

Both respondent and the Administrator have appealed from the oral initial decision issued by Administrative Law Judge Jerrell R. Davis at the conclusion of an evidentiary hearing held on November 30, 1990.¹ In that decision the law judge held that respondent's gear-up landing of a Piper Arrow with one passenger

6010

aboard was careless, and in violation of 14 C.F.R. 91.9,² but that no sanction should be imposed (the Administrator had sought a 30-day suspension of respondent's private pilot certificate).

The record reveals that, at approximately 9:30 p.m. on March 26, 1989, when respondent was approximately five miles from the Long Beach Airport (where he had been cleared to land), his aircraft experienced a total loss of electrical power. As a result, respondent lost all lights in the aircraft and all radio contact with the Long Beach air traffic control (ATC) tower.³ Immediately before the power loss, respondent had been advised by the local controller to keep his speed up due to a jet which was coming in behind him for a landing on the same runway.

Respondent had apparently been attempting to lower the landing gear when the power loss occurred.⁴ Respondent's

² Section 91.9 [now recodified as § 91.13(a)] provided:

§ 91.9 Careless or reckless operation.

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

³ Controllers working in the Long Beach tower testified that when respondent lost electrical power five miles out, the data block associated with the transponder readout from respondent's aircraft was lost, but that the location of the aircraft was still visible on the radar scope.

⁴ Although respondent claimed that immediately before losing power he saw three green lights on his panel, which would indicate that the gear was fully extended, the law judge rejected that statement in light of expert testimony which convinced him that it would be impossible for the lights to come on unless the gear was in fact extended. (Tr. 306.) In any event, respondent concedes that after the power failure he was not sure whether the gear was extended.

passenger testified that thirty seconds before landing,⁵ respondent, who had been "fiddling" with something, told her that he did not know whether he could get the landing gear down. (Tr. 179-80.) Ten seconds before landing, respondent told her they would not know if they had gear until they touched down and that she should get ready to run. Neither respondent nor his passenger was injured in the gear-up landing but the aircraft was damaged. Respondent paid approximately \$7,000 of the total cost of repairs (the remainder was covered by insurance).

On appeal, respondent argues that his decision to land was a proper response to an emergency situation and that any violation should therefore be excused by 14 C.F.R. 91.3(b).⁶ Respondent asserts that, in light of the circumstances (he was non-instrument rated, it was night, he had lost all lights and radio power), going around would have involved a greater risk of hazard than landing gear up. He also asserts that there was not enough time between his loss of electrical power and touchdown to complete the emergency procedures required to lower the gear manually. Accordingly, respondent argues, the law judge erred in

⁵ The Administrator's expert testified that the plane would have been approximately two thirds of a mile from the runway at that time. (Tr. 89.)

⁶ Section 91.3(b) states:

§91.3 Responsibility and authority of the pilot in command.

(b) In an in-flight emergency requiring immediate action, the pilot in command may deviate from any rule of this part to the extent required to meet that emergency.

finding that a go-around or immediate activation of the emergency gear extension mechanism were viable options.

The Administrator appeals from the law judge's finding that no sanction was required in this case, arguing that a sanction should be imposed in order to encourage all pilots to exercise vigilance to avoid this type of incident. The Administrator asserts that this case is different from prior gear-up landing cases where no sanction was imposed in that this respondent knew his gear might not be down but landed nonetheless.⁷ The Administrator asks us to reinstate the 30-day suspension sought in the complaint.

For the reasons discussed below, we affirm the law judge insofar as he found respondent's gear-up landing to be in violation of section 91.9, but reverse his choice of sanction. We have concluded that a 15-day suspension of respondent's private pilot certificate is appropriate in this case.

There is no question that respondent was faced with a difficult situation: on five-mile final, having just been told by ATC to keep his speed up, he lost all electrical power while attempting to lower the landing gear, and was required to fly the

⁷ The Administrator cites three cases where no sanction was imposed for a gear-up landing: Administrator v. Struve, 3 NTSB 1908 (1979) (pilot landing on dirt landing strip on his farm became distracted by chemical applicator rig at approach end of runway and forgot to lower gear); Administrator v. Jennings, 2 NTSB 715 (1974) (pilot thought he had pushed gear toggle switch into proper position and thus believed landing gear was down); and Administrator v. McCarthney, 2 NTSB 1531 (1975) (pilot whose attention was focused on a lateral control problem failed to lower gear, but the Administrator did not appeal from the law judge's imposition of no sanction).

aircraft with one hand and hold a flashlight with the other. However, we are not persuaded that these circumstances justified respondent's decision to immediately land the plane in spite of his doubts as to whether the gear was extended. Assuming arguendo that these circumstances could be considered an in-flight emergency, respondent's gear-up landing is not the sort of deviation from the rules contemplated by section 91.3(b) since it was not necessary or required to meet that emergency. Indeed, rather than alleviating respondent's difficulties, his gear-up landing merely added to them.

We agree with the law judge that, in view of where the power loss occurred (approximately five miles from the airport), "had [respondent] been sufficiently knowledgeable of the gear-down emergency landing procedure [he] would have had ample time to initiate that procedure while continuing his approach." (Tr. 306.) Unrebutted expert testimony indicated that, once the aircraft is slowed to the required speed (88 knots), the emergency gear extension procedure takes only 10-15 seconds. (Tr. 104-5, 134.) While we recognize that respondent might have been reluctant to slow the aircraft from his speed of 100 knots to 88 knots because he had been told by the controller that there was a jet coming in behind him and he should keep his speed up, we are compelled to note that, with both airplanes on the controller's radar, respondent and the jet were placed in far greater danger by respondent's disabled aircraft on the runway (following his gear-up landing) than it would have been by a

momentary slowdown in respondent's approach speed.

We also agree with the law judge that, if respondent was unable or unprepared to execute the emergency gear extension procedure when he first realized his gear might not be down, he should have gone around and prepared to use the emergency procedure on his next landing.

In sum, we conclude that respondent's conduct in this case was careless and in violation of section 91.9.

On the issue of sanction, the law judge stated that respondent had "suffered chagrin and embarrassment," noting that he was required to undergo a remedial re-examination pursuant to section 609 of the Federal Aviation Act (49 U.S.C. 1429), and that respondent paid approximately \$7,000 for repairs to the aircraft. Citing language from Administrator v. Struve,⁸ a case where no sanction was imposed for a gear-up landing, the law judge concluded that a suspension of respondent's certificate would lack any value as a deterrence to him or to others and would be counterproductive and unfair. (Tr. 307.)

We have, in the past, approved the imposition of no sanction in gear-up landing cases, based in part on the rationale that the expense of aircraft repairs and professional humiliation

⁸ In Struve, at 1909, we noted that "the consequences of a gear-up landing are direct, immediate and certain: damage to the plane and the resulting cost of repair" and that "[t]hese consequences provide, in effect, an extremely practicable deterrent." We concluded, however, that we would have to "deal with each gear-up landing case on an ad hoc basis, considering its individual circumstances in light of precedent, in order to determine whether a suspension is necessary."

constitute a sufficient deterrent to that pilot and others. Administrator v. Jennings, 2 NTSB 715 (1974); Administrator v. Struve, 3 NTSB 1908 (1979). Nonetheless, as we said more recently in Administrator v. Burkhead, 5 NTSB 1866, 1868 (1987), gear-up landings continue to occur and, in our view, "some sanction is necessary to encourage all pilots to exercise vigilance to avoid this type of mishap." We stand by this view.

Furthermore, we cannot ignore the fact that this case is unlike Jennings and Struve (where the pilots were unaware that the gear was not lowered) in that respondent made a conscious choice to land when he knew he might not have landing gear.

Accordingly, although we recognize that respondent paid approximately \$7,000 toward the cost of repairs and may feel that he requires no further deterrent, we believe that some sanction is necessary in order to encourage heightened vigilance among all pilots. However, we do not believe that the 30-day suspension sought by the Administrator is necessary in this case. We have determined that a 15-day suspension is more appropriate, and is supported by precedent.⁹

⁹ See Administrator v. Burkhead at 1868 and Administrator v. Cidale, 3 NTSB 2199 (1979).

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The Administrator's appeal is granted in part;
3. The initial decision is affirmed, except as to sanction; and
4. The suspension of respondent's private pilot certificate shall commence 30 days after the service of this opinion and order.¹⁰

VOGT, Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order. Vice Chairman COUGHLIN did not concur.

¹⁰ For the purpose of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).